

Montana Water Court
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FILED
02/14/2023
Sara Calkins
CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
41U-0134-R-2023
Stern, Anika
1.00

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
DEARBORN RIVER BASIN (41U)
PRELIMINARY DECREE

* * * * *

CLAIMANT: Broken O Land & Livestock LLC

OBJECTOR: Broken O Land & Livestock LLC

CASE 41U-0134-R-2023
41U 96836-00
41U 30126634

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above-stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Broken O Land & Livestock LLC (Broken O) is the record owner of claims 41U 96836-00 and 41U 30126634.

2. Claims 41U 96836-00 and 41U 30126634 were decreed with DNRC issue remarks:

41U 96836-00:

ON 3/11/1985, AFTER ISSUANCE OF THE TEMPORARY PRELIMINARY DECREE, THE DNRC NOTIFIED THE WATER COURT OF A POTENTIAL ISSUE WITH THE SOURCE NAME FOR THIS CLAIM. THE ELEMENT IS BEING ADDED TO THE OBJECTION LIST AND WILL BE ADDRESSED DURING ADJUDICATION OF THE PRELIMINARY DECREE.

41U 30126634:

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41U DECREE ISSUED 05/10/1984.

The issue remark decreed on claim 41U 96836-00 is based on correspondence in the claim file indicating the following correction should be made:

Source Name: SPRING, UNNAMED TRIBUTARY OF MYTES CREEK MYLES CREEK

The issue remark decreed on claim 41U 30126634 is a notice-type remark and does not require further proceedings.

3. Broken O objected to claim 41U 96836-00, stating:

We agree with the DNRC issue remark. Source name is incorrect, should be "Spring, Unnamed Tributary of Myles Creek", not "Mytes Creek". See attached topographic map.

PRINCIPLES AND CONCLUSIONS OF LAW

1. The Water Court is required to address all issue remarks decreed on a claim as well as any objections the claim receives. Sections 85-2-233, 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own water right claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. The exempt claim issue remark decreed on claim 41U 30126634 has served its notice purpose and can be removed.

RECOMMENDATIONS

1. The following correction should be made to claim 41U 96826-00, resolving the issue remark and the Objection:

Source Name: SPRING, UNNAMED TRIBUTARY OF ~~MYLES CREEK~~ MYLES CREEK

2. The issue remarks should be removed from the claims in this Case.

Post Decree Abstracts of Water Right Claims are served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Broken O Land & Livestock LLC
c/o DMS Natural Resources LLC
602 S Ferguson Ave Ste 2
Bozeman, MT 59718-6483

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U**

Water Right Number: 41U 96836-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: BROKEN O LAND & LIVESTOCK LLC
%DMS NATURAL RESOURCES LLC
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718 6483

Priority Date: DECEMBER 31, 1903

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF MYLES CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESENE	5	18N	4W	LEWIS AND CLARK

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESENE	5	18N	4W	LEWIS AND CLARK

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
DEARBORN RIVER
BASIN 41U

Water Right Number: 41U 30126634 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners: BROKEN O LAND & LIVESTOCK LLC
%DMS NATURAL RESOURCES LLC
602 S FERGUSON AVE STE 2
BOZEMAN, MT 59718 6483

Priority Date: JANUARY 1, 1870

Type of Historical Right: USE

Purpose (use): STOCK

Flow Rate: A SPECIFIC FLOW RATE HAS NOT BEEN DECREED BECAUSE THIS USE CONSISTS OF STOCK DRINKING DIRECTLY FROM THE SOURCE, OR FROM A DITCH SYSTEM. THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNT HISTORICALLY NECESSARY TO SUSTAIN THIS PURPOSE.

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: FLAT CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NESE	7	18N	4W	LEWIS AND CLARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
2		NWSE	7	18N	4W	LEWIS AND CLARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					
3		SESE	7	18N	4W	LEWIS AND CLARK
Period of Diversion:	JANUARY 1 TO DECEMBER 31					
Diversion Means:	LIVESTOCK DIRECT FROM SOURCE					

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NESE	7	18N	4W	LEWIS AND CLARK
2			NWSE	7	18N	4W	LEWIS AND CLARK
3			SESE	7	18N	4W	LEWIS AND CLARK